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ANIMAL INDUSTRY ACT.

The act of Congress of May 29, 1884, 23 Stat. 31, c. 60, known as the Animal Industry Act, does not cover the whole subject of the transportation of live stock from one State to another. The statute of Colorado of March 21, 1885, relating to the introduction of infectious or contagious diseases among the cattle and horses of that State, relates to matters not covered by the Animal Industry Act of Congress, and is not in violation of the Constitution of the United States. *Reid* v. *Colorado*, 137.

APPEAL AND WRIT OF ERROR.

1. One convicted in a state court for an alleged violation of the criminal statutes of the State, and who contends that he is held in violation of the Constitution of the United State, must ordinarily first take his case to the highest court of the State in which the judgment could be reviewed, and thence bring it, if unsuccessful there, to this court by writ of error. *Reid* v. *Jones*, 153.
2. The distinction between a writ of error which brings up matter of law only, and an appeal, which, unless expressly restricted, brings up both law and fact, has always been observed by this court and recognized by the legislation of Congress from the foundation of the Government. *Elliott* v. *Toeppner*, 327.
3. Judgments and decrees of the Circuit Court of Appeals in all cases arising under the patent laws and under the criminal laws are made

final by section six of the judiciary act of March 3, 1891, and cannot be brought from that court to this by appeal or writ of error. And even if a constitutional question so arises in the Circuit Court that a party may bring his case directly to this court under section five of that act, yet if he does not do so, but carries his case to the Circuit Court of Appeals, he must abide by the judgment of that court. *Cary Mfg. Co.* v. *Acme Flexible Clasp Co.*, 427.

4. The jurisdiction referred to in the first subdivision of the fifth section of the judiciary act of March 3, 1891, is the jurisdiction of the Circuit and District Courts of the United States as such; and when a case comes directly to this court under that subdivision, the question of jurisdiction alone is open to examination. *Mexican Central Ry. Co.* v. *Eckman*, 429.
5. Where an applicant files with the District Court of Alaska a petition for a license for vessels and salmon canneries under section 460 of the act of 1889 providing a criminal code for Alaska, 30 Stat. 1253, 1336, and with it a protest against being required to take out or pay for such license on various grounds stated therein, to which petition and protest the clerk of the District Court is not made a party—although the papers may have been served on the district attorney—and the District Court thereafter makes an order granting the license, stating therein that so far as the protestant seeks relief against the payment of the licenses "the same is overruled, denied and ignored," an appeal to this court will not lie as there is no action, suit, or case, within the constitutional provision (Article III, section 2) in which was entered a final judgment or decree such as entitled the petitioner to appeal to this court. *Pacific Steam Whaling Co.* v. *United States*, 447.
6. A motion to dismiss for want of a Federal question cannot be sustained when the title involved depends upon a Spanish grant claimed to have been perfected under the treaty of 1819 with Spain, and a patent of the United States in alleged confirmation of such claim. *Transportation Co.* v. *Mobile*, 479.
7. The construction given by the Supreme Court of Kansas to the Kansas statutes holding that real estate situated in that State, the title to which was vested in a non-resident executor, to whom letters testamentary had been issued by a court of another jurisdiction, may be attached and sold in an action of debt against the non-resident executor, is binding on this court. And, treating the statutes as having such import as a decision upon a matter of local law, this court must determine whether as so construed they violate the Federal right involved. *Manley* v. *Park*, 547.
8. When the jurisdiction of the Circuit Court of the United States is invoked, solely on the ground of diversity of citizenship, two classes of cases can arise, one in which the questions expressed in section 5 of the Judiciary Act of 1891 appear in the course of the proceedings and one in which other Federal questions appear. Cases of the first class may be brought to this court directly or may be taken to the Circuit Court of Appeals, but if they are taken to the latter court they cannot then be brought here. Cases of the second class must be taken to

the Circuit Court of Appeals and its judgment will be final. *Ayres* v. *Polsdorfer*, 585.

See CERTIORARI;
JUDGMENTS AND DECREES, 1, 2;
JURISDICTION.

ASSIGNMENT FOR CREDITORS.

1. The question whether a general assignment for the benefit of creditors is rendered invalid by reason of a provision that the "preferred creditors shall accept their dividends in full satisfaction and discharge of their respective claims" is one determinable by the local law of the jurisdiction from which the question arises. *Robinson & Co.* v. *Belt*, 41.
2. Under the laws of Arkansas, made applicable to the Indian Territory, a stipulation for a release in a general assignment, which is made only as a condition of preference, does not invalidate the instrument. *Ib.*

BANKRUPTCY.

The question whether under section 67*f* of the bankruptcy act of 1898 where a final decree recovered within four months of the petition, but which was based on a judgment creditors' bill in equity filed long prior thereto, the creditor had a lien on the assets involved in the action which was superior to the title of the trustee in bankruptcy, or whether (as was held by the District Court) section 67*f* prevented the complainant from acquiring any benefit from the lien, or the fund attached except through the trustee in bankruptcy *pro rata* with other creditors. *Held*, that while the lien created by a judgment creditors' bill is contingent in the sense that it may possibly be defeated by the event of the suit, it is in itself, and so long as it exists, a charge, a specific lien, on the assets, not subject to being divested save by payment of the judgment sought to be collected, and a judgment or decree in enforcement of an otherwise valid preëxisting lien is not the judgment denounced by the bankruptcy statute which is plainly confined to judgments creating liens. *Metcalf* v. *Barker*, 165.

2. When a judgment creditor files his bill in equity long prior to the bankruptcy of the defendant, thereby obtaining a lien on specific assets, and diligently prosecutes it to a final judgment, he acquires a lien on the property of the bankrupts which is superior to the title of the trustee, and a District Court of the United States does not have jurisdiction to make an order in bankruptcy proceedings against the defendants enjoining them from enforcing such lien. *Ib.*
3. Where a judgment creditor filed a bill in a state court to set aside a conveyance made by a person, who during the pendency of the action and years after its commencement is adjudged a bankrupt, and to apply the proceeds of the property affected towards the payment of the debt, the state court acquires such complete jurisdiction and control over the bankrupt and his property that jurisdiction is not divested by proceedings in bankruptcy, and it is the duty of the state court to proceed to final decree notwithstanding the adjudication in bankruptcy,

under the rule that the court which first acquires rightful jurisdiction over the subject matter should not be interfered with; and the District Court of the United States in which the bankruptcy proceedings are pending has no jurisdiction to restrain the complainants in the state court from executing their decree obtained in that court. *Pickens* v. *Roy*, 177.

4. Nor does the mere fact that the complainant in such an action in a state court proved up her judgment as a preferred debt in bankruptcy "without waiving her preference," operate to deprive the state court of jurisdiction or amount to a consent to the exercise of jurisdiction by the District Court to restrain her from executing the judgment. *Ib.*
5. The right of a person, against whom an involuntary petition of bankruptcy has been filed, to a trial by jury under section 19 of the bankruptcy act is absolute and cannot be withheld at the discretion of the court. *Elliott* v. *Toeppner*, 327.
6. The trial is a trial according to the course of the common law and the court cannot enter judgment, as the chancellor may, contrary to the verdict, but the verdict may be set aside or the judgment may be reversed for error of law as in common law cases. *Ib.*
7. Congress did not attempt by section 25*a* of the bankrupt act, which provides for appeals as in equity cases from the District Court to the Circuit Court of Appeals from judgments adjudging or refusing to adjudge the defendant a bankrupt, to empower the appellate court to reëxamine the facts determined by a jury under section 19, otherwise than according to the rules of the common law. The provision applies to judgments where trial by jury has not been demanded and the court proceeds on its own findings of fact. In such case the facts and the law are reëxaminable on appeal; but in case of a jury trial the judgment is reviewable only by writ of error for error in law, and alleged errors in instructions, the giving or refusal of instructions or in the admission or rejection of evidence which must appear by exceptions duly taken and preserved by bill of exceptions in the absence of which such alleged errors cannot be considered, although the transcript of the record contains what purports to be the evidence heard by the jury, exceptions reserved to evidence, admitted or excluded, the charge and exceptions, instructions asked and refused and exceptions. *Ib.*
8. A seat or membership in the Philadelphia Stock Exchange belonging to a person adjudicated a bankrupt is property which the bankrupt could have transferred within the meaning of subdivision 5 of section 70 of the bankruptcy act of 1898, and it therefore passes to the trustee in bankruptcy of the owner. *Page* v. *Edmunds*, 596.
9. There is nothing in the bankruptcy act or the statutes of Pennsylvania, as the latter have been construed by the highest courts of that State, exempting such seat from sale by the trustee in bankruptcy. *Ib.*

BONDS.

Bonds required by the State in exercise of the powers granted to it, are exempt from taxation by the General Government. *Ambrosini* v. *United States*, 1.

BOUNTY.

When a tax is imposed upon all sugar produced, but is remitted upon all sugar exported, then, by whatever process or in whatever manner or under whatever name it is disguised, it is a bounty upon exportation. As under the laws and regulations of Russia, the Russian exporter of sugar obtains from his government a certificate solely because of such exportation, which certificate is salable and has an actual value in the open market, the government of Russia does secure to the exporter from that country, as the inevitable result of such action, a money reward or gratuity whenever he exports sugar from Russia, and which is in effect a bounty upon the export of sugar which subjects such sugar, upon its importation into the United States, to an additional duty equal to the entire amount of such bounty under the act of Congress of July 24, 1897, 30 Stat. 205. *Downs* v. *United States*, 496.

BURDEN OF PROOF.

See TAX SALE.

CASES DISTINGUISHED.

1. *Garrett* v. *Weinberg*, 54 S. C. 127, distinguished from *Raub* v. *Carpenter*, 159.
2. *Illinois Central R. R. Co.* v. *Illinois*, 146 U. S. 387, distinguished from *Mobile Transportation Co.* v. *Mobile*, 479.
3. *Lehigh Valley R. R. Co.* v. *Pennsylvania*, 145 U. S. 192, distinguished from *Hanley* v. *Kansas City Southern Ry. Co.*, 617.
4. *Northern Pacific Ry. Co.* v. *Amato*, 144 U. S. 471, distinguished from *Ayres* v. *Polsdorfer*, 585.
5. *Powers* v. *Chesapeake & Ohio Ry. Co.*, 169 U. S. 92, distinguished from *Kansas City Suburban Belt Ry. Co.* v. *Herman*, 63.

CASES FOLLOWED.

1. *Bostwick* v. *Brinkerhoff*, 106 U. S. 3, followed in *Macfarland* v. *Brown*, 239.
2. *Bryan* v. *Brasius*, 162 U. S. 414, followed in *Romig* v. *Gillett*, 111.
3. *Hagar* v. *Reclamation District*, 111 U. S. 701, followed in *Turpin* v. *Lemon*, 51.
4. *In re Oteiza*, 136 U. S. 330, followed in *Grin* v. *Shine*, 181.
5. *Loeb* v. *Columbia Township Trustees*, 179 U. S. 47, followed in *Ayres* v. *Polsdorfer*, 585.
6. *Marriott* v. *Brune*, 9 How. 619, followed in *Lawder* v. *Stone*, 281.
7. *Smoot* v. *Rittenhouse*, decided January 10, 1876, followed in *Fidelity & Deposit Co.* v. *United States*, 315.
8. *Spies* v. *Illinois*, 123 U. S. 131, followed in *Jacobi* v. *Alabama*, 133.
9. *Wassum* v. *Feeney*, 121 Mass. 93, cited in *Kohl* v. *Lehlback*, 160 U. S. 293, 301, followed in *Raub* v. *Carpenter*, 159.

CERTIORARI.

Where a case has been improperly brought to this court by writ of error, it is within the powers of the court conferred by the judiciary act of

March 3, 1901, to allow a writ of certiorari and direct that the copy of the record heretofore filed under the writ of error be deemed and taken as a sufficient return to the certiorari. *Security Trust Co.* v. *Dent*, 237.

CLAIMS.

See COURT OF CLAIMS;
INTERSTATE COMMERCE COMMISSION.

COMMERCE.

See INTERSTATE COMMERCE.

CONGRESS.

See ANIMAL INDUSTRY ACT;
APPEAL AND WRIT OF ERROR, 2;
BANKRUPTCY, 6;
COURT OF CLAIMS, 1,
COURTS, 9;
INDIANS, 3, 5, 6, 7, 8;
INTERSTATE COMMERCE, 1, 2, 4;
LEGISLATION, 1, 2;
STATUTES, B.

CONSTITUTIONAL LAW

1. Exactly what due process of law requires in the assessment and collection of general taxes has never yet been decided by this court; while it has been held that notice must be given to the owner at some stage of proceedings for condemnation or imposition of special taxes, it has also been held that laws for assessment and collection of general taxes stand upon a somewhat different footing and are construed with the utmost liberality, sometimes even to the extent of holding that no notice whatever is necessary (Mr. Justice Field's definition of "due process of law" in *Hagar* v. *Reclamation District*, 111 U. S. 701, followed), and the Fourteenth Amendment is satisfied by showing that the usual course prescribed by the state laws requires notice to the taxpayers and is in conformity with natural justice. *Turpin* v. *Lemon*, 51.
2. A statute of Wisconsin enacted prior to June 25, 1898, but which was to go into operation on September 1, 1898, requiring foreign corporations to file a copy of their charter with the Secretary of State and to pay a small fee as a condition for doing business there does not impair the obligation of a contract made on June 25, 1898, by a foreign corporation to do business in Wisconsin after September 1, 1898. *Diamond Glue Co.* v. *United States Glue Co.*, 611.
3. A ruling by a state court in a criminal case in which it was held that an objection as to non-compliance with a statute requiring the jury to be placed in charge of a sworn officer was not made in time and was to be deemed as waived, was but an adjudication simply of a question of criminal and local law and did not impair the constitutional guaranty that no State shall deprive any person of liberty without due process of law. *Dreyer* v. *Illinois*, 71.
4. The decision of the state court sustaining the Indeterminate Sentence Act of Illinois of 1899, did not infringe the constitutional guaranty of

due process of law, even though that statute confers judicial powers upon non-judicial officers. *Ib.*

5. If the jury in a criminal cause be discharged by the court because of their being unable to agree upon a verdict, the accused, if tried a second time, cannot be said to have been put twice in jeopardy of life or limb, whether regard be had to the Fifth or the Fourteenth Amendment. *Ib.*
6. No one is given by the Constitution of the United States the *right* to introduce into a State, against its will, live stock affected by a contagious, infectious or communicable disease, and whose presence in the State will or may be injurious to its domestic animals. The State—Congress not having assumed charge of the matter as involved in interstate commerce—may protect its people and their property against such dangers, taking care always that the means employed to that end do not go beyond the necessities of the case or unreasonably burden the exercise of privileges secured by the Constitution of the United States. *Reid* v. *Colorado*, 137.
7. The statute of Colorado of March 21, 1885, relating to the introduction of infectious or contagious disease among the cattle and horses of that State, is not inconsistent with the clause of the Constitution declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States; for it is applicable alike to citizens of all the States. *Ib.*
8. An ordinance of the borough of New Hope, Pennsylvania, imposing an annual license fee of one dollar per pole and two dollars and a half per mile of wire on the telegraph, telephone and electric light poles within the limits of the borough is not a tax on the property of the telegraph company owning the poles and wires, or on its transmission of messages or on its receipts for such transmission, but is a charge in the enforcement of local governmental supervision, and as such is not in itself obnoxious to the commerce clause of the Federal Constitution. *Telegraph Co.* v. *New Hope*, 419.
9. While, in a general sense, the laws in force at the time a contract is made enter into its obligation, parties have no vested right in the particular remedies or modes of procedure then existing. *Oshkosh Waterworks Co.* v. *Oshkosh*, 437.
10. The Legislature may not withdraw all remedies, and thus, in effect, destroy the contract; nor impose such new restrictions or conditions as would materially delay or embarrass the enforcement of rights under the contract, according to the course of justice as established when the contract was made. Neither could be done without impairing the obligation of the contract. But the Legislature may change existing remedies or modes of procedure, without impairing the obligation of contracts, if a substantial or efficacious remedy remains or is provided, by means of which a party can enforce his rights under the contract. *Ib.*
11. The contract clause of the Constitution of the United States has reference only to a statute of a State enacted *after* the making of the contract whose obligation is alleged to have been impaired. *Ib.*
12. The act of the legislature of Alabama of January 31, 1867, conveying to the city of Mobile the shore and soil under Mobile River is not uncon-

stitutional as impairing vested rights of owners of grants bordering on Mobile River, as the rule in Alabama that a grant by the United States of lands bordering on a navigable river includes the shore or bank of such river and extends to the water line at low water, does not relate to land bordering on tidal streams. As the State held the lands under water below high water mark as trustee for the public it had the right to devolve the trust upon the city of Mobile. There is a difference between the legislature of a State granting land beneath navigable waters of the State, and below high water mark, to a private railroad corporation and granting it to a municipal corporation whose mayor, aldermen and common council are created and declared trustees to hold, possess, direct, control and manage the shore and soil granted in such manner as they may deem best for the public good. *Illinois Central R. R. Co.* v. *Illinois*, 146 U. S. 387, distinguished. *Transportation Co.* v. *Mobile*, 479.

13. Where the courts of one State fully consider a statute of another State and the decisions of the courts of that State construing it, and the case turns upon the construction of the statute and not upon its validity, due faith and credit is not denied by one State to the statute of another State, and the manner in which the statute is construed is not necessarily a Federal question. *Johnson* v. *New York Life Insurance Co.*, 491.

14. The statutes of Louisiana and the ordinances of the city of New Orleans which provide and regulate the method for paving streets at the cost of the owners of abutting lots, as such statutes and ordinances have been construed by the Supreme Court of Louisiana, are not obnoxious, under the facts of this case to the provisions of the Fourteenth Amendment to the Constitution of the United States. *Chadwick* v. *Kelley*, 540.

15. Where an ordinance of the city of New Orleans and specification for the paving of a street require the contractor to employ only *bona fide* resident citizens of the city of New Orleans as laborers, a resident citizen of New Orleans, who is not one of the laborers excluded by the ordinance from employment and who does not occupy any representative relation to them, cannot have a lien on his property for his *pro rata* share of the improvemente invalidated on the ground that citizens of Louisiana and of each and every State are deprived of their privileges and immunities under article IV, section 2, of, and the Fourteenth Amendment to. the Constitution of the United States. *Ib.*

16. If a person owning property affected by the assessment for the work done under such ordinance wishes to raise such question on the ground that the ordinance is prejudicial to his property rights because confining the right to labor to resident citizens increases the cost of the work he must raise the question in time to stay the work *in limine*. *Ib.*

17. The provision in article IV, section 26 of the constitution of California providing that "all contracts for the sales of shares of the capital stock of any corporation or association, on margin, or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent

jurisdiction," is not contrary to the first section of the Fourteenth Amendment of the Constitution of the United States, so far as it relates to sales on margins. *Otis* v. *Parker*, 606.

See ANIMAL INDUSTRY ACT; CONTRACT, 2, 3; INDIANS, 8; JURY TRIAL.

CONTRACT.

1. Where members contributed property to a society under an agreement that the value thereof was to be refunded on withdrawal from membership, and by a subsequent agreement it was provided that each individual was to be considered as having finally and irrevocably parted with all his former contributions, and on withdrawing should not be entitled to demand an account thereof as a matter of right, but it should be left altogether to the discretion of the superintendent to decide whether any, and if any, what, allowance should be made to such member or his representatives as a donation, in an action by descendants of members long since retired from the society, for the distribution of the property and assets of the society on the ground that it had ceased to exist and that its assets should revert to the heirs of the original contributors: *Held* that the facts do not show that there was any dissolution of the society; that the relations of the members and the society were fixed by contract; that the plaintiffs could not have other rights than their ancestors had; that no trust was created by the agreement of 1836, and under its terms when the plaintiffs' ancestors (who had not contributed any property) died or withdrew from the society their rights were fixed by the terms of that agreement; the members who died left no rights to their representatives, and had no rights which they could transmit to the plaintiffs. *Schwartz* v. *Duss*, 8.

2. When a Maryland corporation, chartered in 1827, and possessing certain immunities from taxation, which under the then constitution might have been irrepealable, becomes merged with other corporations in an entirly new corporation possessing new rights and franchises created after the adoption of the constitution of 1850, under which the legislature has power to alter and repeal charters of, and laws creating, corporations, the right of exemption, if it ever passed to the new corporation, is subject to the right of repeal, and hence is not protected from repeal by the contract clause of the Federal Constitution. *Northern Central Ry. Co.* v. *Maryland*, 258.

3. An act of the legislature compromising litigation between the State and such new corporation arising from the claim of the latter that it was exempt from taxation under the immunities at one time possessed by one of its constituent corporations, and fixing a rate of taxation to be paid annually thereafter by the new corporation, cannot be regarded as a legislative contract granting an irrepealable right forbidden by the then existing constitution of the State. If, therefore, the legislature subsequently passes another act fixing a higher rate of taxation, and the highest court of the State decides that such act repeals the former act and subjects the corporation to the higher rate of taxation, the

later act is not bad as impairing the obligation of contracts within the purview of the Constitution of the United States as the compromise, when made, was subject to the right to repeal, reserved by the constitution of the State at that time. *Ib.*

4. As public policy forbids the insertion in a contract of a condition which would tend to induce crime, it also forbids the enforcement of a contract under circumstances which cannot be lawfully stipulated for. *Burt* v. *Insurance Company*, 362.
5. The promise of an insurance company to pay the beneficiary of a policy a sum certain and all the money paid on the policy in assessments, was not impaired by subsequent amendments to the constitution of the company, notwithstanding the agreement of the policy holder to abide by the constitution, etc., of the company "as they now are, or may be constitutionally changed hereafter;" inasmuch as the amendments operated only upon policies thereafter issued. *Indemnity Company* v. *Jarman*, 197.

See CONSTITUTIONAL LAW, 2, 9, 10, 11.

CORPORATIONS.

The statutory liability of stockholders of corporations (other than railway, religious or charitable) equal to the amount of their stock under sections 32 and 34 of the General Statutes of Kansas of 1868, as decided by the highest court of that State, could not be collected by the receiver of an insolvent corporation, but was an asset which a creditor of the corporation alone could recover for his individual benefit to the extent required to pay his judgment obtained against the corporation. *Evans* v. *Nellis*, 271.

See CONTRACTS, 2, 3; EQUITY, 3, 4;
COURTS, 6; INTERSTATE COMMERCE, 3.

COURT OF CLAIMS.

1. Where Congress has given the Court of Claims jurisdiction to pass upon the claims of certain Indians against the United States, and in an action brought under such act a fund has been created and the mode of distribution has been prescribed by the court which established the amount of the fund, and such method has been approved by this court, its disposition in accordance with the course prescribed by the courts must be held a finality Where the circumstances are as in the case at bar any further relief must be obtained from Congress and cannot be given by the courts. *Pam-To-Pee* v. *United States*, 371.
2. The jurisdiction of the Court of Claims, as of other courts, extends beyond the mere entry of a judgment to an inquiry whether the judgment has been properly executed. *Ib.*

COURTS.

1. Where an officer of the administrative department of the Government assumes to act under the authority granted by Federal statutes in a

case not covered by them, the matter may be reviewed by the courts, even though such action be taken after a hearing. *American School of Magnetic Healing* v. *McAnnulty*, 94.

2. The tribunal provided for by the Act of Congress of June 6, 1900, "making further provision for a civil government in Alaska and for other purposes," whether newly created or an existing one continued, has jurisdiction of all criminal cases pending at the time of the passage of the Act of March 2, 1899, providing for a code of criminal procedure for that district. *Bird* v. *United States*, 118.

• 3. Under the statutes of the State of Minnesota and the decisions of the courts of that State construing and applying them, a creditor cannot maintain a suit in the courts of that State for a debt against a decedent after the expiration of the period limited by the order of the probate court in which creditors may present claims against the deceased for examination and allowance, and after an allowance of the administrator's final account and a final decree of distribution. *Security Trust Co.* v. *Black River National Bank*, 211.

4. Although it is a well settled principle that a foreign creditor may establish his debt in the courts of the United States against the personal representative of a decedent, notwithstanding the fact that the laws of the State limit the right to establish such demands to a proceeding in the probate courts of the State, it is also equally well settled that the courts of the United States in enforcing such claims are administering the laws of the State of the domicile and are bound by the same rules that govern the local tribunals; and if a foreign creditor of a Minnesota decedent delays proceedings in the Federal court until after the time to present claims fixed by the order of the probate court has expired and the final distribution of the estate has been effected, he cannot use the Federal courts to devolve a new responsibility upon the administrator and interfere with the rights of other parties, creditors or distributees, which have become vested under the regular and orderly administration of the estate under the laws of the State. *Ib.*

5. Although under the state statutes the probate court may, before final settlement and upon good cause shown, extend the time for presentation of claims, this court is not called upon to determine in a case where no application for such extension was made before final settlement whether a Federal court might or might not, on good cause shown, extend such time. It is obvious and always has been held that the United States Circuit Court cannot in the trial of an action at law exercise the powers of a court of equity. *Ib.*

6. The receiver of an insolvent corporation of Kansas (other than railway, religious or charitable) appointed in 1898 who has not brought an action against the corporation and all the stockholders resident in the State required by the statutes of the State, as construed by its courts, as a prerequisite to an action against an individual stockholder, cannot maintain an action in a Circuit Court of the United States against an individual stockholder for the amount of the statutory liability. *Evans* v. *Nellis*, 271.

7. The fact that this court has held that a clause avoiding a policy in case

the insured should die by his own hand applied only where the insured intentionally took his own life while sane, does not estop the court from giving a different construction to a statute embodying an important question of public policy. *Indemnity Company* v. *Jarman*, 197.

8. This court has already sustained the power of the Supreme Court of the District of Columbia to adopt a rule providing that if the plaintiff or his agent shall file an affidavit in any action arising *ex contractu* setting out distinctly his cause of action, etc., and serve the defendant with copies thereof and of the declaration, he shall be entitled to judgment unless the defendant shall file, along with his plea, if in bar, an affidavit of defence denying the right of the plaintiff as to the whole or some specific part of his claim, and specifically also the grounds of his defence, and has also sustained the validity of the rule as adopted (No. 73) by said court. *Smoot* v. *Rittenhouse*, decided January 10, 1876. *Fidelity and Deposit Co.* v. *United States*, 315.
9. Congress has the power to change forms of procedure and it has been decided by this court, (*Smoot* v. *Rittenhouse*, *supra*,) that the power to enact rules of procedure has been delegated to the Supreme Court of the District of Columbia. *Ib.*
10. Exceptions based on disputable considerations of the spirit of the rule will not be taken against the interpretation of the Supreme Court of the District of Columbia, which has administered the rule for many years. *Ib.*
11. This court will adopt the construction of the state courts of a state statute as to the necessity of a demand being made before commencement of action. *Insurance Company* v. *Lewis*, 335.

See BANKRUPTCY, 3;
EQUITY, 1, 2, 3;
INDIANS, 5, 6, 7, 8.

CRIMINAL LAW

See CONSTITUTIONAL LAW, 3, 4, 5; INSTRUCTIONS TO JURY, 1, 2, 3;
EMBEZZLEMENT; WITNESS.

CUSTOMS DUTIES.

1. Section 23 of the Customs Administrative Act of June 10, 1890, permitting importers to abandon imported articles to the United States and be relieved from the payment of duties thereon, provided the portion so abandoned amounts to at least ten per cent of the total value or quantity of the invoice, does not apply to a cargo of fruit, a portion whereof (which is less than ten per cent) decays on the voyage becoming utterly worthless, and necessarily dumped overboard under the sanitary regulations of the port after arrival of the vessel. *Lawder* v. *Stone*, 281.
2. It would be unequitable and presumably not within the intention of Congress to assess duty upon articles which on a voyage to this country and before arrival within the limits of a port of entry had become utterly worthless by reason of casualty, decay or other natural causes,

and which the importer might rightfully abandon and refuse to receive or enter for consumption. *Ib.*

3. Articles thus circumstanced are not in truth within the category of goods, wares and merchandise imported into the United States, within the meaning of the tariff laws. *Ib.*
4. Article 1236 of the Customs Regulations of 1899, which is based upon sec. 2984, Rev. Stat., relates to merchandise which is destroyed or deteriorates after actually having been entered and is not applicable where the merchandise, as in this case, was never actually entered because it was destroyed before it could be entered. *Ib.*

See BOUNTY;
LEGISLATION, 2.

DUE PROCESS OF LAW

See CONSTITUTIONAL LAW, 1, 3, 4.

EMBEZZLEMENT.

1. Under a statute punishing embezzlement of property which has come under the control or care of the defendant by *virtue of his employment* as clerk, agent, or servant, it is sufficient to allege that the defendant while so employed embezzled money entrusted to, and received by, him in his capacity as clerk, etc. *Grin* v. *Shine*, 181.
2. Where a cheque is delivered to a clerk with instructions to draw money from the bank, take it to the railway, and forward it to another city, he obtains possession of both the cheque and the money honestly and with the consent of his principal, and if he subsequently converts the money to his use, it is *prima facie* a case of embezzlement and not of larceny, within the definitions of both crimes under the laws of California. *Ib.*

See EXTRADITION, 3.

EQUITY.

1. Before a court of equity will in any way help a party to thwart the intent of Congress, as expressed in a statute, it should affirmatively and clearly appear that there is an absolute necessity for its interference in order to prevent irreparable injury. *Corbus* v. *Gold Mining Co.*, 455.
2. If the party primarily and directly charged with a tax is unable to make a case for the interference of a court of equity no one subordinately and indirectly affected by the tax should be given relief unless he shows not merely irreparable injury to the tax debtor as well as to himself, but also that he has taken every essential preliminary step to justify his claim of a right to act in behalf of such tax debtor. *Ib.*
3. The fact that this court entertained the bill of equity in *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, does not determine to what extent a court of equity will permit a stockholder to maintain a suit nominally against the corporation, but really for its benefit; and where a bill is filed by a stockholder to enjoin the officers of a corporation from paying a tax as required by a statute of the United States, this court will examine the bill in its entirety and determine whether, under all the

circumstances, the plaintiff has made such a showing of wrong on the part of the corporation as will justify the suit, and if it appears that the suit is collusive or that the plaintiff has not done everything which ought to have been done to secure action by the corporation and its directors, and justify under the assumption of a controversy between himself and the corporation his prosecution of a litigation for its benefit, the bill will be dismissed. *Ib.*

4. In an action similar to the preceding, *Corbus* v. *Gold Mining Company*, p. 455, *ante*, brought by a stockholder to restrain a corporation from paying certain taxes in which the bill does not show where the directors reside and does not contain any averment of an application to the directors, or to the president and treasurer, to take action to relieve from the burden of the taxes, the bill was properly dismissed. *Stewart* v. *Steamship Company*, 466.

See INJUNCTION;

ESTOPPEL.

See COURTS, 7;
INSURANCE, 5.

EVIDENCE.

1. On the trial of issues as to a will, a witness who was a physician and a relative of deceased, after testifying in regard to certain facts as to health, actions of deceased, cause of death and results of an autopsy, was asked, "Doctor, have you formed any opinion from your uncle's general condition of health and the conditions disclosed by his brain at this investigation, *and from all you know about him yourself*, what his condition of mind was?" The trial court sustained the objection taken by the caveators to the words in italics on the ground that no sufficient basis had been laid for that portion of the evidence, and that the facts relied upon in this particular should be first adduced. *Held*, that the exclusion was not error. *Raub* v. *Carpenter*, 159.
2. The sufficiency of evidence properly certified under section 5 of the act of August 3, 1882, to establish the criminality of the accused for the purposes of extradition, cannot be reviewed upon *habeas corpus*. *Grin* v. *Shine*, 181.
3. Where depositions and other documents offered in evidence in an extradition case are certified by the proper officer as required by act of Congress, except that the certificate of such officer says that the papers "are properly and legally authenticated so as to entitle them to be received and admitted *as evidence* for similar purposes by the tribunals of Russia," the language being a literal conformation to the statute, adding only the words italicized, the introduction of those words does not invalidate the certificate. *Ib.*

See JURISDICTION, 5, 6, 7;
TAX SALE.

EXECUTORS AND ADMINISTRATORS.

See COURTS, 3, 4.

EXPERT TESTIMONY.

See EVIDENCE, 1.

EXTRADITION.

1. It is a sufficient compliance with the provisions of section 5270 of the Revised Statutes if the commissioner before whom the warrant requires the person arrested to appear has been specifically authorized to act in extradition proceedings on the same day the warrant is issued, and the oath to the complaint need not necessarily be taken before a commissioner specially authorized to act in extradition proceedings; but the judge issuing the warrant may act upon a complaint sworn to before a United States commissioner authorized generally to take affidavits. *Grin* v. *Shine*, 181.
2. A district judge issuing a warrant of arrest in extradition proceedings need not make the warrant returnable before himself, but may make it returnable directly before a commissioner who upon the same day is specially designated to act in extradition proceedings. *Ib.*
3. A complaint in extradition need not set forth the crime with the particularity of an indictment. It is sufficient if it apprises the party of the crime with which he is charged. Such complaint is not defective because it does not use the word "fraudulently" in referring to the defendant's action in embezzling the money intrusted to him as the word "embezzle" implies a fraudulent intent. *Ib.*
4. Under section 5270 of the Revised Statutes the complaint in extradition proceedings may be made by any person acting under authority of the demanding government having knowledge of the facts. The accused, however, can only be surrendered upon the requisition made by the foreign government through the diplomatic agent or superior consular officer, and this may be made entirely independently of the proceeding before the magistrate, and the certificate of the Secretary of State that such demand has been made does not have to be produced before the warrant can be issued. *Ib.*

See EVIDENCE, 2, 3;
JURISDICTION, 10;
TREATIES, 2, 3.

FEDERAL QUESTION.

See JURISDICTION, 3, 4, 6, 7, 8, 11, 14, 17, 19, 20.

HABEAS CORPUS.

See EVIDENCE, 2.

HAWAII.

See JURISDICTION, 11, 13.

IMPORTS.

See CUSTOMS DUTIES, 1, 2, 3.

INDIANS.

1. In an action brought by the Cherokee Nation to enjoin the Secretary of the Interior from leasing oil lands held for the benefit of said Nation under section 13 of the act of Congress approved June 20, 1898, it is not necessary to join as parties defendants the persons or corporations to whom the Secretary proposes to make the leases. *Cherokee Nation* v. *Hitchcock*, 294.

2. The act of Congress entitled "An act for the protection of the people of the Indian Territory, and for other purposes," approved June 28, 1898, which by section 13 thereof gives the Secretary of the Interior exclusive power over oil, coal, asphalt and other minerals in said Territory, and authorizes him to make leases of oil, coal, asphalt and other minerals under certain prescribed conditions, the royalties and rents to be paid into the Treasury of the United States to the credit of the tribe to which they belong, is, notwithstanding the provisions of the treaties with the Cherokee Nation, a valid exercise of power vested in Congress and fully authorizes the Secretary of the Interior to make such leases in the manner prescribed in the act. *Ib.*

3. This court has already (*Stephens* v. *Cherokee Nation*, 174 U. S. 445) sustained the validity of the act of Congress of June 28, 1898, and the precedent of co-relative legislation, wherein the United States practically assumed the full control over the Cherokees, as well as the other nations constituting the five civilized tribes, and took upon itself the determination of membership in the tribes for the purpose of adjusting their rights in the tribal properties. That decision necessarily involves the further holding that Congress is vested with authority to adopt measures to make the tribal property productive and secure therefrom an income for the benefit of the tribe. *Ib.*

4. Under the treaties with, and patents issued to, the Cherokee Nation, whatever of title has been conveyed has been to the Cherokees as a Nation. And no title to any land is in any of the individuals although held by the tribe for the common use and equal benefit of all the members. *Ib.*

5. This court is not concerned with the question whether the act of June 28, 1898, is wise or will operate beneficially to the interest of the Cherokees, as the power which exists in Congress to administer upon, and guard, the tribal property is political and administrative in its nature, and the manner of its exercise is a question within the province of the legislative branch to determine and is not one for the courts. *Ib.*

6. The provisions in article 12 of the Medicine Lodge treaty of 1867 with the Kiowa and Comanche Indians to the effect that no treaty for the cession of any part of the reservation therein described, which may be held in common, shall be of any force or validity as against the Indians unless executed and signed by at least three fourths of all the adult male Indians occupying the same, cannot be adjudged to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians and to deprive Congress, in a possible emergency, when the necessity might be urgent for a partition and

disposal of the tribal lands, of all power to act if the assent of three fourths of all the male Indians could not be obtained. Congress has always exercised plenary authority over the tribal relations of the Indians and the power has always been deemed a political one not subject to be controlled by the courts. *Lone Wolf* v. *Hitchcock*, 553.

7. In view of the legislative power possessed by Congress over treaties with the Indians, and Indian tribal property, even if a subsequent agreement or treaty purporting to be signed by three fourths of all the male Indians was not signed and amendments to such subsequent treaty were not submitted to the Indians, as all these matters were solely within the domain of the legislative authority, the action of Congress is conclusive upon the courts. *Ib.*

8. As the act of June 6, 1900, as to the disposition of these lands was enacted at a time when the tribal relations between the confederated tribes of the Kiowas, Comanches and Apaches still existed, and that statute and the statutes supplementary thereto, dealt with the disposition of tribal property and purported to give an adequate consideration for the surplus lands not allotted among the Indians or reserved for their benefit, such legislation was constitutional and this court will presume that Congress acted in perfect good faith and exercised its best judgment in the premises, and as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of such legislation. *Ib.*

See COURT OF CLAIMS, 1.

INFECTIOUS DISEASES.

See CONSTITUTIONAL LAW, 6, 7.

INJUNCTION.

Where parties have violated no law they have the legal right under the general acts of Congress relating to the mails to have their letters delivered at the post office as directed, and as those letters contain checks, drafts, money orders and money itself, all of which became their property as soon as deposited in the various post offices for transmission by mail, if the same are not delivered to them they will sustain irreparable injury, and there being no adequate remedy at law, they are entitled to equitable relief and an injunction preventing the local postmaster withholding their mail under an order issued by the Postmaster General. *American School of Magnetic Healing* v. *McAnnulty*, 94.

See EQUITY, 3;
INDIANS, 1,
TRADE MARK.

INSTRUCTIONS TO JURY.

1. An instruction in a capital case that, in determining the issue of self-defence on the evidence presented, the jury "must consider the situation of the parties at the time and all the surrounding circumstances, together with the testimony of the witness for the prosecution as well as the

evidence of the defendant," was not error on the ground that it in effect declared that even if the testimony of the witnesses for the Government were untrue, it was to be considered in delivering the verdict and because all the defendant's evidence (except his own) was withdrawn from the jury on the issue of self-defence, as it appears that the jury were also instructed that it was their duty "to consider the whole evidence and render a verdict in accordance with the facts proved upon the trial." *Bird* v. *United States*, 118.

2. There was no error in the following instruction: "Evidence has been offered of the escape of the defendant, or attempted escape, after arrest on the charge on which the defendant is now being tried. This evidence is admitted on the theory that the defendant is in fear of the consequences of his crime and is attempting to escape therefrom; in other words, that guilt may be inferred from the fact of escape from custody. The court instructs you that the inference that may be drawn from an escape is strong or slight according to the facts surrounding the party at the time. If a party is caught in the act of crime and speedily makes an attempt for liberty under desperate circumstances, the inference of guilt would be strong, but if the attempt was made after many months of confinement and escape comparatively without danger, then the inference of guilt to be drawn from an escape is slight; but whether the inference of guilt is strong or slight depends upon the conditions and circumstances surrounding the accused person at the time." *Ib.*
3. Where there are no facts in a case to justify a requested instruction, it is properly refused. *Ib.*

INSURANCE.

1. That section of the Revised Statutes of Missouri declaring that in all suits upon policies of life insurance it shall be no defence that the insured committed suicide, applies not only to cases where the insured takes his own life voluntarily and in full possession of his mental faculties, but to all cases of self-destruction by the insured, whether sane or insane, unless he contemplated suicide at the time he made his application for the policy. *Indemnity Company* v. *Jarman*, 197.
2. The repeal of the foregoing section relative to the suicide of insured cannot affect policies issued anterior to the date of the repealing act, but the rights of the parties under such policies are to be determined by the suicide statute. *Ib.*
3. As the delivery of a policy of insurance and the payment of the premium are reciprocal or concurrent considerations and together with the method of payment are all essential things, it makes no difference, when the first premium is paid by a note, whether the words, "if note be given for the payment of the premium hereon or any part thereof, and same is not paid at maturity, the said policy shall cease and determine" be printed upon the face or the back of the receipt given for the note or in the policy. As such receipt expressed the conditions upon which the note was received, the memorandum on the back must be considered as embodied in the policy and the endorsements thereon,

4. Where the record does not show that it was contended in the state court that a state law under which the plaintiff in error was convicted was in contravention of the Constitution of the United States, the objection that the law is unconstitutional must be regarded as relating only to the constitution of the State. *Layton* v. *Missouri*, 356.
5. A party claiming a title, privilege or immunity under the Constitution of the United States within the third clause of § 709 of the Revised Statutes, which must be specially set up and claimed by the party seeking to take advantage of it, but which cannot be set up in any pleading anterior to the trial, must make the claim either on the motion for new trial or in the assignments of error filed in the Supreme Court of the State. It is insufficient, if it first appears in the petition for a writ of error from this court. *Johnson* v. *New York Life Insurance Co.*, 491.
6. It is sufficient answer to a claim that a statute of Utah amounts to a deprivation of the rights under the Fourteenth Amendment that it appears for the first time in the petition for a writ of error from this court and that the claim of invalidity was not raised in the District Court, nor assigned as a ground of error on the appeal to the Supreme Court of the State, and that that court did not pass upon the action of the District Court in view of the unconstitutionality of the statute. *Telluride Power Co.* v. *Rio Grande Western Ry. Co.*, 569.
7. A bill for relief to test the constitutionality of a law cannot be maintained until the plaintiff has shown that he has personally suffered an injury by the application of the law. *Turpin* v. *Lemon*, 51.
8. A Federal defence which cannot be availed of unless raised before judgment is not efficacious, when it has not been raised at the proper time, to avoid the judgment when rendered. *Manley* v. *Park*, 547.

See APPEAL AND WRIT OF ERROR;
BANKRUPTCY;
JURISDICTION.

PRESUMPTION OF SURVIVORSHIP

There is no presumption of survivorship in the case of those who perish by a common disaster, in the absence of proof tending to show the order in which dissolution took place; and, actual survivorship being unascertainable, descent and distribution take the same course as if the deaths had been simultaneous. *Young Women's Christian Home* v. *French*, 401.

PRIZE CASES.

See PARTIES.

PUBLIC IMPROVEMENTS.

See CONSTITUTIONAL LAW, 14, 15, 16.

PUBLIC LANDS.

The action of government surveyors in segregating and setting apart a lake

by meander lines from the public lands and the approval of such survey by the Commissioner of the General Land Office was not an adjudication by the Government of the United States by its duly authorized officers and agents, that the lake so segregated and set apart was the property of a State and not a part of the public domain. It was beyond the powers of a government surveyor to determine the title to such lands, or to adjudicate anything whatever upon the subject. *Iowa* v. *Rood*, 87.

PUBLIC POLICY.

The agreements made by the Harmony Society of Pennsylvania held by the courts of that State not to have been contrary to public policy. *Schwartz* v. *Duss*, 8.

See CONTRACT, 4.

RAILROADS.

See INTERSTATE COMMERCE, 4.

REMOVAL OF CAUSES.

1. While an action commenced in a state court against two defendants, one of whom is a resident and the other a non-resident, may be removed to the Circuit Court of the United States by the non-resident defendant if it can be shown that the cause of action is separable and the resident defendant is joined fraudulently for the purpose of preventing the removal of the cause to the Federal court, such removal cannot be had if it does not appear that the resident defendant is fraudulently joined for such purpose. *Kansas City Suburban Belt Ry. Co.* v. *Herman*, 63.
2. This rule will be adhered to even if on the trial of the action the lower court holds that no evidence was given by the plaintiff tending to show liability of the resident defendant, and a second application for removal from the state to the Federal court has been made and denied after a trial, and the trial court has sustained a demurrer to the evidence as to the resident defendant and where it appears that the ruling was on the merits and *in invitum*. *Ib.*
3. Where the state court refuses to remove a cause to the Circuit Court and afterwards on filing the record in the Circuit Court that court remands the cause to the state court, if there was any error in the ruling of the state court it becomes wholly immaterial. *Telluride Power Co.* v. *Rio Grande Western Ry. Co.*, 569.

RIPARIAN RIGHTS.

It has been conclusively settled by this court (*Pollard's Lessee* v. *Hagan*, 3 How. 212,) that the State of Alabama, when admitted to the Union, became entitled to the soil under the navigable waters below high water mark within the limits of the State, not previously granted. *Transportation Co.* v. *Mobile*, 479.

See CONSTITUTIONAL LAW, 12.

as well as in the note and the receipt given therefor. *Insurance Company* v. *Lewis*, 335.

4. When the first premium on a policy of insurance is paid by note and a receipt with such an endorsement thereon is given and accepted therefor, whilst the primary condition of forfeiture for non-payment of the annual premium is waived by the acceptance of the note, a secondary condition thereupon comes into operation, by which the policy will be void if the note be not paid at maturity and no affirmative action canceling the policy is necessary on the part of the insurance company if the note be not paid when due and presented; and if the policy contains a provision that no person other than the president or secretary can waive any of the conditions, a local agent has no power to extend the time of payment of the note after the same has become part due. *Ib.*
5. A life insurance company may by its conduct waive proof of death and estop itself from setting up the provisions of the policy requiring said proof. *Ib.*
6. Where a man, who has committed murder, thereafter assigns a policy of insurance on his own life payable to his estate and is subsequently convicted and executed for the crime, the beneficiaries cannot recover on the policy. The crime of the assured is not one of the risks covered by a policy of insurance, and there is an implied obligation on his part to do nothing to wrongfully accelerate the maturity of the policy. *Burt* v. *Insurance Company*, 362.
7. Where a policy of insurance is written at the request of a broker, and delivered to him by the agent of the company on his promise not to regard it as binding until the company shall have inspected and accepted the risk, the policy being subject to immediate cancellation, and the company thereafter promptly inspects and rejects the risk, and the agent of the company so notifies the broker who thereupon agrees to return the policy, and no premium is charged or paid as between the broker and agent, there is no final and absolute delivery of the policy, but the delivery is conditional only; and, as no completed contract of insurance is ever actually entered into, the fact that the policy, by inadvertence on the part of the broker, is not returned as promised to the agent, but is sent to the person named therein as insured, will not render the insurance company liable in case the building insured is destroyed by fire, even though the policy came into the hands of the insured prior to the fire and without any knowledge on his part of the action of the company or the mistake made by the broker in delivering the policy. *Insurance Company* v. *Wilson*, 467.

See CONTRACTS, 5;
COURTS, 7.

INTERSTATE COMMERCE.

1. The transportation of live stock from State to State is a branch of interstate commerce and any specified rule or regulation in respect of such transportation, which Congress may lawfully prescribe or authorize

and which may properly be deemed a regulation of such commerce, is paramount throughout the Union. *Reid* v. *Colorado*, 137.

2. When the entire subject of the transportation of live stock from one State to another is taken under direct national supervision and a system devised by which diseased stock may be excluded from interstate commerce, all local or state regulations in respect of such matters and covering the same ground will cease to have any force, whether formally abrogated or not; and such rules and regulations as Congress may lawfully prescribe or authorize will alone control. The power which the States might thus exercise may in this way be suspended until national control is abandoned and the subject be thereby left under the power of the States. *Ib.*
3. A statute of Wisconsin enacted prior to June 25, 1898, but which was to go into operation on September 1; 1898, requiring foreign corporations to file a copy of their charter with the Secretary of State and to pay a small fee as a condition for doing business there, does not interfere unlawfully with interstate commerce in the case of a foreign corporation contracting on June 25, 1898, to do business in the State after September 1, 1898, notwithstanding the fact that the business was the production of a product which naturally would be sold outside the State. *Diamond Glue Co.* v. *United States Glue Co.*, 611.
4. The transportation of goods on a through bill of lading from Fort Smith, Arkansas, to Grannis, Arkansas, over respondent's railroad by way of Spiro in the Indian Territory, a total distance of one hundred and sixteen miles, of which fifty-two miles is in Arkansas and sixty-four in the Indian Territory, is interstate commerce, and is under the regulation of Congress, free from interference by the State of Arkansas; a railway company operating such a line can maintain an action for equitable relief restraining the state railroad commissioners from fixing and enforcing rates between points within the State, when the transportation is partly without the State and under the conditions above stated. *Lehigh Valley Railroad Co.* v. *Pennsylvania*, 145 U. S. 192, distinguished as applying to *taxation* on freight received on merchandise transported from one point to another within the same State by a route partly through another State and not to the *regulation* of such transportation. *Hanley* v. *Kansas City Southern Ry. Co.*, 617.
5. An ordinance passed by the board of aldermen of the city of Greensboro, North Carolina, in pursuance of powers conferred by the legislature of the State, that every person engaged in the business of selling or delivering picture frames, pictures, photographs or likenesses of the human face in the city of Greensboro, whether an order for the same shall have been previously taken or not, shall pay a license tax of ten dollars for each year, is an attempt to interfere with, and to regulate commerce, and as such is invalid as to an agent of a corporation residing out of the State. *Caldwell* v. *North Carolina*, 622.
6. Where a portrait company, carrying on business in one State obtains orders through an agent in another State for pictures and frames, the fact that in filling the orders it ships the pictures and frames, in separate packages, for convenience in packing and handling, to its own

agent, who places the pictures in their proper places or frames and delivers them to the persons ordering them, does not deprive the transaction of its character of interstate commerce or take it out of the salutary protection of the commerce clause of the Federal Constitution. *Ib.*

See ANIMAL INDUSTRY ACT;
CONSTITUTIONAL LAW, 6, 8.

INTERSTATE COMMERCE COMMISSION.

The Secretary of the Interstate Commerce Commission is entitle to be reimbursed for telegrams sent by him pursuant to directions of the Commission, on presenting vouchers in the form prescribed by law to the proper auditing officer of the Treasury Department, approved by the chairman of the Commission and accompanied by the request of the chairman that the rules of the Comptroller as to the production of copies of telegrams for which credit is asked be disregarded on account of the confidential character of the messages, the secretary having also offered to submit the books of the Commission to the Comptroller and Auditors of the Treasury. *United States* v. *Moseley*, 322.

JUDGMENTS AND DECREES.

1. A judgment or decree to be final, within the meaning of that term as used in the acts of Congress giving this court jurisdiction on appeals and writs of error, must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the judgment or decree it had already rendered. When, therefore, the Court of Appeals of the District of Columbia reverses an order of the Supreme Court of the District in proceedings for the condemnation of land under the act of Congress of March 3, 1899, 30 Stat. 1381, and remands the case to the lower court for further proceedings as directed by the statute, the decree of the Court of Appeals is not such a final judgment as is reviewable in this court and an appeal therefrom will be dismissed. *Macfarland* v. *Brown*, 239.
2. A decree of the Court of Appeals of the District of Columbia reversing an order of the Supreme Court of the District and remanding the cause to the lower court with directions to vacate the part appealed from and to take further proceedings according to law, is neither in form nor intention a final decree and is not reviewable in this court on appeal. *Macfarland* v. *Byrnes*, 246.

See APPEAL AND WRIT OF ERROR, 3;
JURISDICTION, 2.

JURISDICTION.

1. Where the master, the Circuit Court and the Circuit Court of Appeals have concurred in a finding of fact, this court will not, on account of such concurrence and under the rules of the court, review the disputed facts involved in that finding. *Schwartz* v. *Duss*, 8.

2. The jurisdiction of this court over the judgments and decrees of state courts in suits involving the validity of statutes of the United States can only be exercised when the decision is against their validity. *Baker* v. *Baldwin*, 61.

3. Where the title claimed by the State of Iowa to land formerly the bed of a lake rested solely upon the proposition that the State became vested, upon its admission into the Union, with sovereignty over the beds of all lakes within its borders, and upon the act of the General Government in meandering such lakes and excluding from its survey of public lands all such as lay beneath their waters, and the Supreme Court of the State has decided adversely to the State and in favor of one who claimed under the act of Congress of September 28, 1850, known as the swamp land act, there is no question involving the validity of any treaty or statute of the United States or the constitutionality of any state statute or authority which gives this court jurisdiction. *Iowa* v. *Rood*, 87.

4. The mere fact that a State asserts title to the land beneath its lakes, under a clause of the Constitution or an act of Congress, or that such act or a patent of the United States appears in the chain of title, does not constitute such a right, title or immunity as to give the Federal courts jurisdiction, unless there is either a plausible foundation for such claim, or the title involves the construction of the act or the determination of the rights of the party under it. *Ib.*

5. Evidence of the former testimony of a witness was admitted against defendant's objections based on several grounds, one of which was that he had the constitutional right to be confronted by the witness, but as no reference to the Constitution of the United States was made in the objections, and the constitution of Alabama provides that in all criminal prosecutions the accused has a "right to be confronted by witnesses against him", *Held* that the constitutional right was asserted under the state, and not the Federal, Constitution. *Jacobi* v. *Alabama*, 133.

6. In the state Supreme Court error was assigned to the admission of the evidence as being in violation of the Fourteenth Amendment, but as the court did not refer to that contention, and as the settled rule in Alabama in criminal cases is that when specific grounds of objection are assigned all others are waived, the Supreme Court of the State was not called upon to revise the judgment of the lower court, and this court will not interfere with its action, although if the Supreme Court of the State had passed upon that question the jurisdiction of this court might have been maintained. *Ib.*

Where objection to testimony on the ground that it is in violation to the Constitution of the United States is taken in the highest court of the State for the first time, and that court declines to consider such objection because it was not raised at the trial, the judgment of the state court is conclusive, so far as the right of review by this court is concerned (following *Spies* v. *Illinois*, 123 U. S. 131). *Ib.*

8. If the jurisdiction of the Supreme Court of the United States is invoked on the ground that the judgment of the state court has denied a right,

title, privilege or immunity secured by the Constitution of the United States, it should appear that such right, title, privilege or immunity was specially set up or claimed in the state court. *Home for Incurables* v. *New York City*, 155.

9. This court cannot acquire jurisdiction to review the final judgment of the highest court of the State by reason of a certificate of the Chief Justice of the state court, not made while the case was before it or under its control, stating that the party seeking the intervention of this court raised Federal questions before the state court. While it has been said in some cases that such a certificate is entitled to great respect, and in other cases that its office is to make that more certain and specific which is too general and indefinite in the record, the certificate is insufficient in itself to give jurisdiction or to authorize this court to determine Federal questions that do not appear in any form from the record to have been brought to the attention of the state court. *Ib.*
10. The jurisdiction of a United States commissioner in extradition proceedings is not dependent upon a preliminary requisition from the demanding government. *Grin* v. *Shine*, 181.
11. The jurisdiction to review judgments or decrees of the courts of the Territory of Hawaii is to be determined, not by the law governing as respects Territories generally, but by Rev. Stat. § 709, relating to the power to review judgments and decrees of state courts. *Equitable Life Assurance Society* v. *Brown*, 308.
12. Where in a case coming within the purview of section 709 of the Revised Statutes, a Federal question—not inherently such—has been explicitly raised below, if the claim be frivilous or has been so absolutely foreclosed by previous rulings of this court as to leave no room for real controversy, a motion to dismiss will prevail. *Ib.*
13. A New York life insurance corporation did business in Hawaii and, under statutory regulations, was there subject to suit. It delivered a policy in Hawaii to a person there domiciled, which was among the effects of such person in Hawaii of which possession was taken by an administrator appointed by the Hawaiian courts. Suit was brought in Hawaii upon the policy and judgment was recovered. *Held*, that the assertion that the policy had its *situs*, for the purposes of suit, solely at the domicil of the corporation was unfounded. *Ib.*
14. This court cannot review the final judgments of state courts on the ground that the validity of state enactments under the constitution of the United States had been adjudged, where those courts merely declined to pass upon the Federal question because not raised in the trial court as required by the state practice. *Layton* v. *Missouri*, 356.
15. Where a general guardian has the legal right to bring a suit in his own name in the courts of the State of which he is a citizen, and the ward is not a citizen of the State, a Federal court has jurisdiction in an action by the guardian against a foreign corporation, inasmuch as such jurisdiction is dependent upon the citizenship of the guardian and not that of the ward. *Mexican Central Ry. Co.* v. *Eckman*, 429.
16. The general rule is that the jurisdiction of the Federal courts depends not on the relative situation of the parties concerned in interest, but on the relative situation of the parties named in the record. *Ib.*

17. While this court can decide as an original question the power of a State to convey property to a corporation, when the case comes from the Circuit Court of the United States, if the case comes up on writ of error to a state court, and the highest court of the State has itself put a construction upon an act of its own legislature, and upon its conformity to the constitution of the State, the decision of such court upon those questions is obligatory on this court. *Transportation Co.* v. *Mobile*, 479.

18. The serious duty of condemning state legislation as unconstitutional and void cannot be thrown upon this court except at the suit of parties directly and certainly affected thereby. *Chadwick* v. *Kelley*, 540.

19. Where the Supreme Court of Utah has construed the statutes and constitution of Utah to the effect that a foreign corporation had no existence as a corporation in the State, and could acquire, therefore, no rights as such, and that an individual connected with the corporation had no independent rights to the premises, these conclusions do not involve the decision of Federal questions, but only the meaning and effect of local statutes and a finding of fact, neither of which is reviewable by this court. Whatever rights the plaintiff in error in this action may have had under § 2339, Revised Statutes of the United States, depended upon questions of fact and of local law, which are not reviewable by this court. *Telluride Power Co.* v. *Rio Grande Western Ry. Co.*, 569.

20. A domestic judgment of a state court entered after the defendant had appeared generally and whose validity it would have been the duty of this court to uphold on direct proceedings to obtain a reversal thereof, should be treated by courts of the United States so far as it relates to Federal questions which existed at the commencement of the action, as valid between the parties to the judgment, and if no claim to the protection of the Constitution of the United States was set up in any form in the proceedings had in the state court prior to judgment, such protection cannot be invoked for the first time in this court to annul the judgment on the ground that it is absolutely void and of no effect under the Constitution of the United States. *Manley* v. *Park*, 547.

See APPEAL AND WRIT OF ERROR; BANKRUPTCY, 2, 3; COURT OF CLAIMS; COURTS, 2.

JURY.

After decree on the verdict of a jury in the trial of issues as to a will, the caveator moved to vacate the decree on the ground that one of the jurors was incompetent *propter delictum* for service, but the trial court denied the motion, the record stating that the court was of the opinion that at the trial there was no evidence of mental incompetency, fraud or undue influence. *Held*, that the verdict and judgment were not absolutely void, and that it was within the discretion of the trial court to grant or deny the motion, and as no other verdict could have been rendered consistently with the facts, the presence of the juror objected to could not have operated to the prejudice of the plaintiffs in error, and as there was nothing to show that injustice was done to them, the trial court did not abuse its discretion. *Raub* v. *Carpenter*, 159.

See INSTRUCTIONS TO JURY.

JURY TRIAL.

The rule of the supreme court of the District of Columbia (73) providing that a plaintiff in an action *ex contractu* who files a sufficient affidavit and serves the defendant with copies thereof and of the declaration is entitled to judgment in the absence of an affidavit by the defendant sufficient to offset same, does not deprive a defendant who files a plea in bar and demands a trial by jury, but who also fails to file the affidavit of defence required by the rule, of a right to a trial by jury, but simply prescribes the means of making an issue in regard to which, if the same be made as prescribed, the right of trial by jury accrues. *Fidelity and Deposit Co.* v. *United States*, 315.

See BANKRUPTCY, 4.

LAND GRANTS.

All the lands below high water mark of the Mobile River having passed to Alabama on her admission to the Union in 1819, there was nothing left upon which a patent of the United States dated in 1836, could operate, and the person claiming to hold land below high water mark under said patent has no vested interest in such land, which would require compensation or proceedings in eminent domain on the part of the State to take such lands. *Transportation Co.* v. *Mobile*, 479.

LEGISLATION.

1. The principle is universal that legislation, whether by Congress or by a State, must be taken to be valid, unless the contrary is made clearly to appear. *Reid* v. *Colorado*, 137.
2. When Congress enacted the Customs Administrative Act of 1890, it must be presumed to have possessed knowledge of the decisions of this court and the consistent application made of the doctrine of those decisions by the officials charged with the execution of the tariff laws, and in the light of this fact it would require a clear expression by Congress of its intention to adopt a contrary policy before a court would be justified in holding that such was the purpose of the legislative branch of the government. *Lawder* v. *Stone*, 281.

See CONSTITUTIONAL LAW, 10;
INDIANS, 2, 3, 5, 6, 7, 8;
JURISDICTION, 18.

LIMITATION OF ACTIONS.

See COURTS, 3, 4.

LOCAL LAW

See ASSIGNMENT FOR CREDITORS;
CONSTITUTIONAL LAW, 3, 8, 14, 15;
COURTS, 6;
EMBEZZLEMENT;
INSURANCE, 1,
INTERSTATE COMMERCE, 3, 5;
JURISDICTION, 15, 19;
POLICE POWER OF STATE;
TAX SALE, 1.

MORTGAGE.

A mortgagee who enters into possession, not forcibly but peacefully and

under the authority of a foreclosure proceeding, cannot be dispossessed by the mortgagor or one claiming under him, so long as the mortgage remains unpaid. *Romig* v. *Gillett*, 111.

See TERRITORIAL LAWS, 2.

PARTIES.

Where a rear admiral of the United States Navy who has filed a libel in prize in his own behalf and also in behalf of all the officers and enlisted men in the Navy taking part in the engagement, dies, and his death has been suggested on the record, it is not necessary that the personal representatives of the deceased should come in or that any person should be designated *ex officio*, but the court may substitute any one interested in the prosecution of the litigation, who has personally appeared in the case. *United States* v. *Sampson*, 436.

POLICE POWER OF STATE.

The General Assembly of Illinois in enacting the dramshop act legislated "against the evils arising from the sale of intoxicating liquors" not by prohibiting, but by regulating, the traffic, and such legislation was in exercise of the police power which is reserved to the States free from any Federal restriction material in this action. *Ambrosini* v. *United States*, 1.

POSTAL LAWS.

Sections 2929 and 4041 of the Revised Statutes and the act of Congress of March 2, 1875, authorizing the retention of letters directed to persons obtaining money through the mails by false pretenses, do not justify the Postmaster-General in prohibiting the delivery of letters addressed to a corporation which assumes to heal disease through the influence of the mind, as the statutes were not intended to cover cases based on false opinions, but only cases of actual fraud, in fact, in regard to which opinions formed no basis. *American School of Magnetic Healing* v. *McAnnulty*, 94.

See INJUNCTION.

PRACTICE.

1. Objections not raised in the court below cannot be raised in this court. The action of the lower court is not reversible for errors which counsel in this court have first evolved from the record. *Robinson & Co.* v. *Belt*, 41.
2. Where a fraudulent joinder of defendants is averred by the party petitioning for removal and is specifically denied, the petitioner has the affirmative of the issue. *Kansas City Suburban Belt Ry. Co.* v. *Herman*, 63.
3. A demurrer to a bill of complaint admitting the material facts alleged therein, does not permit of a finding of fraud where the allegations of the bill do not justify such finding. *American School of Magnetic Healing* v. *McAnnulty*, 94.

SHIPPING.

Where the charter party of a vessel bound with a cargo of sugar from Java, to a port in the United States provides that the vessel should discharge at New York, Boston, Philadelphia or Baltimore "or so near the port of discharge as she may safely get and deliver the same, always afloat, in a customary place, and manner, in such dock, as directed by charterers, agreeably to bills of lading," and also provides "all goods to be brought to and taken from alongside of the ship always afloat at said charterers' risk and expense, who may direct the same at the most convenient anchorage; lighterage, if any, to reach the port of destination, or deliver the cargo at port of destination, remains for account of receivers, any custom of the port to the contrary notwithstanding," and the vessel has three steel masts built up solidly from the bottom to the top and so riveted that there is no way of taking them down and the mainmast requires one hundred and forty-five feet of clear space to pass under any obstruction, which is more than the height at dead low water of the Brooklyn Bridge over the East River, charterers have no right to order the vessel to discharge at a dock above the Brooklyn Bridge; and if the vessel discharges by lighterage from the most convenient place below the bridge, the charterers must pay the expense of lighterage from the vessel to the dock. Under the above conditions it is not a just exercise of the right given to the charterers by the charter party to select a dock in getting to which the vessel could not always be afloat or to which she could not safely get. Under such circumstances the vessel is not obliged to sail around Long Island and thus reach the dock above the bridge by coming through Long Island Sound and Hell Gate. *Mencke* v. *Cargo of Java Sugar*, 248.

STARE DECISIS.

See COURTS, 10.

STATES.

See BONDS;
POLICE POWERS OF STATES;
TAXATION.

STATUTES.

A. IN GENERAL.

1. There is a presumption against a construction which would render a statute ineffective or inefficient, or which would cause grave public injury or even inconvenience. *Bird* v. *United States*, 118.
2. The validity of a Wisconsin statute in respect of regulating the transaction of business of a foreign corporation within the State by conditions precedent, is not effected by the invalidity of a provision relating to partnerships where such provision is separable and its invalidity without effect upon the remainder of the act. *Diamond Glue Co.* v. *United States Glue Co.*, 611.

3. While under the decisions of the Supreme Court of Missouri it must be held that the statute declaring that in all suits upon policies of life insurance it shall be no defence that the insured committed suicide, was repealed by a subsequent act, with respect to policies issued anterior to the date of the repealing act the rights of the parties are to be determined by the suicide statute. *Indemnity Company* v. *Jarman*, 197.

B. STATUTES OF THE UNITED STATES.

See ANIMAL INDUSTRY ACT;
APPEAL AND WRIT OF ERROR, 3, 4, 5, 8;
BANKRUPTCY;
BOUNTY;
COURTS, 2;
CUSTOMS DUTIES, 1,
EVIDENCE, 2;
EXTRADITION, 1,
INDIANS;
JUDGMENTS AND DECREES, 1,
JURISDICTION, 3, 11, 12, 19;
LEGISLATION, 2;
POSTAL LAWS;
PRACTICE, 5;
TAXATION, 1,
WITNESS, 1.

C. STATUTES OF THE STATES AND TERRITORIES.

Alabama. *See* CONSTITUTIONAL LAW, 12.
Arkansas. *See* ASSIGNMENT FOR CREDITORS, 2.
California. *See* EMBEZZLEMENT.
Colorado. *See* CONSTITUTIONAL LAW, 7.
Illinois. *See* CONSTITUTIONAL LAW, 4;
POLICE POWER.
Indian Territory. *See* TERRITORIAL LAWS, 1.
Kansas. *See* APPEAL AND WRIT OF ERROR, 7;
CORPORATIONS;
COURTS, 6.
Louisiana. *See* CONSTITUTIONAL LAW, 14.
Maryland. *See* CONTRACTS, 2, 3.
Minnesota. *See* COURTS, 3.
Missouri. *See* INSURANCE, 1.
Oklahoma. *See* TERRITORIAL LAWS, 2.
West Virginia. *See* TAX SALE.
Wisconsin. *See* INTERSTATE COMMERCE.

SURVEYS.

See PUBLIC LANDS.

TAXATION.

Section 17 of the War Revenue Act of 1898, providing for the exemption from taxation of "all bonds, debentures or certificates of indebtedness issued by the officers of the United States Government, or by the officers of any State, county, town, municipal corporation, or other corporation exercising the taxing power." *Held* to apply to bonds required by state statute to be given by applicants for license to sell lig-

uor; and that an indictment for an offense under the War Revenue Act in not stamping such bond should have been quashed. *Ambrosini* v. *United States*, 1.

See BONDS; BOUNTY; CONSTITUTIONAL LAW, 8; CONTRACTS, 2, 3; CUSTOMS DUTIES; INTERSTATE COMMERCE, 5; TAX SALE.

TAX SALE.

The statutes of West Virginia in regard to the sale of land for unpaid taxes require certain proceedings to be taken by the sheriff, but do not require the sheriff to show in his return that he has complied with these requirements; the statutes also make the deed given by the sheriff *prima facie* evidence that the material facts therein recited are true. *Held* that the effect of these statutes is to change the burden of proof which rested at common law upon the purchaser at a tax sale to show the regularity of all proceedings prior to the deed and to cast it upon the party who contests the sale. *Turpin* v. *Lemon*, 51.

TERRITORIAL LAWS.

1. Under the Act of Congress of May 2, 1890, the laws of Arkansas respecting assignments for the benefit of creditors, as well as the statute of frauds, are extended and put in force in the Indian Territory. In adopting these laws the courts of the Indian Territory are bound to respect the decisions of the Supreme Court of Arkansas interpreting them. *Robinson & Co.* v. *Belt*, 41.
2. Under §§ 3950, 3951 and 3955 of the statutes of Oklahoma where a judgment of foreclosure and sale of land in Oklahoma Territory is based upon service of the summons by publication, the facts tending to show the exercise of due diligence in attempting to serve the defendant within the Territory must be disclosed in the affidavit on which the order for service by publication is based. *Romig* v. *Gillett*, 111.
3. But where a publication has been made, approved by the court and a decree entered thereon, and the mortgagee put in possession thereunder, the mortgage not having been paid, and the mortgagee has improved the property, § 4498 of the statutes of Oklahoma will protect the mortgagee in possession, and equitable principles must control the measure of relief to which the defendant is entitled, and while she will be given the right to appear, plead and make such defence as under the facts and principles of equity she is entitled to, the possession of the mortgagee will not be disturbed in advance of such defence. *Ib.*

TRADE MARK.

When the owner of a trade mark applies for an injunction to restrain the defendant from injuring his property by making false representations to the public, it is essential that the plaintiff should not in his trade mark or in his advertisements and business, be himself guilty of any false or misleading representation, and if he makes any material false

statement in connection with the property which he seeks to protect, he loses his right to claim the assistance of a court of equity; and where any symbol or label claimed as a trade mark is so constructed or worded as to make or contain a distinct material assertion which is false, no property can be claimed on it, or, in other words, the right to the exclusive use of it cannot be maintained. *Worden* v. *California Fig Syrup Co.*, 516.

TREATIES.

1. Article III of the treaty with France ceding Louisiana has not even a remote bearing upon the question of title of the State of Iowa to the land beneath its lakes. *Iowa* v. *Rood*, 87.
2. Extradition treaties should be faithfully observed and interpreted with a view to fulfilling our just obligations to other powers, without sacrificing the legal or constitutional rights of the accused. Technical non-compliance with formalities of criminal procedure should not be allowed to stand in the way of the discharge of the international obligations of this Government. *Grin* v. *Shine*, 181.
3. An order made by an officer in Russia, purporting to act as an examining magistrate, and reciting the fact of defendant's flight and ordering him to be brought before an examining magistrate, which is evidently designed to secure the apprehension of the accused and his production before an examining magistrate, although not in the form of a warrant of arrest as used in this country, is a sufficient compliance with the provision of the treaty which requires an authenticated copy of the warrant of arrest or of some other equivalent judicial document issued by a judge or magistrate of the demanding government. Furthermore, Congress not having required by section 5270 the production of a warrant of arrest by the foreign magistrate, has waived that requirement of the treaty. *Ib.*

See INDIANS, 4, 6.

TRIAL.

See BANKRUPTCY, 4, 5;
EVIDENCE, 1,
JURY.

TRUST.

See CONTRACT, 1,
CONSTITUTIONAL LAW, 12.

WAR REVENUE ACT.

See TAXATION.

WILL.

1. Whether by a particular will a condition precedent, a condition subsequent, or a conditional limitation is imposed, is, in the absence of unmistakable language, matter of construction, arrived at in view of the

familiar rules that the intention of the testator must prevail, and that intestacy should be prevented, if legally possible. *Young Women's Christian Home* v. *French*, 401.

2. Where the state of facts at the time of testator's death do not substantially differ from what the will showed was contemplated when it was executed, the interpolation of some phrase covering the contingency of inability to ascertain survivorship is unnecessary, and the intention as sufficiently declared on the whole will may be carried into effect. *Ib.*

WITNESS.

1. The purpose of section 1033 of the Revised Statutes of the United States requiring that in capital cases the list of witnesses be given to the defendant at least two days before the trial, is to point out the persons who may testify against him, and this is best accomplished by the name the witness bears at the time and not some name that the witness may have had at a prior time; and where a female witness for the prosecution is designated on the trial indictment and the list of witnesses given to the defendant on the trial by her maiden name, which was the name by which she was known at the time, although she had been married and divorced and had subsequently borne the name of another man with whom she lived, the trial court properly overruled the objections of the plaintiff in error to the testimony on the ground that the name so designated was not her name. *Bird* v. *United States*, 118.